

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Leo David Lemire,

Petitioner,

v.

John R. Pate,

Respondent.

C/A No. 0:16-4025-DCN-PJG

ORDER

Petitioner Leo David Lemire, a state prisoner who is represented by counsel, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising three grounds for relief. Respondent filed a return and motion for summary judgment on March 30, 2017. (ECF Nos. 11 & 12.) Respondent contended that because the Petition included both exhausted (Ground One) and unexhausted claims (Grounds Two and Three), it is a “mixed” petition and should be dismissed for Petitioner’s failure to exhaust his available state court remedies.¹ See generally 28 U.S.C. § 2254(b)-(c); Rhines v. Weber, 544 U.S. 269 (2005).

The court held a hearing on October 17, 2017 on Respondent’s motion for summary judgment. The court granted Petitioner fourteen days to file an amended petition if he so elected, and if no amended petition was filed, the court indicated it would recommend the case be stayed pursuant to Rhines v. Weber, 544 U.S. 269 (2005), so that Petitioner could pursue his available state remedies in state court. Instead, Petitioner has submitted a letter indicating he is abandoning the

¹ In Respondent’s memorandum in support of summary judgment, Respondent indicated that if Petitioner were to proceed only as to the sole exhausted claim—Ground One—Respondent would argue that Ground One is procedurally defaulted. (ECF No. 11 at 13 n.8 & 15 n.9.)

unexhausted claims in his Petition—Grounds Two and Three—and wishes to proceed only as to Ground One of the Petition. (ECF No. 27.)

Consequently, Respondent's motion for summary judgment is dismissed as moot, (ECF No. 12), and Respondent is directed to file an amended return, and appropriate motion if he so desires, addressing Ground One of the Petition within fourteen days of the date of this order.

IT IS SO ORDERED.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

November 2, 2017
Columbia, South Carolina